IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 142-DB of 2001

Date of Decision :- October 17, 2006.

Raj Kumar ....APPELLANT

VERSUS

State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present:- Mr. Vishal Aggarwal, Advocate (Amicus Curiae)
for the appellant.

Mr. S.S.Randhawa, Senior D.A.G. Punjab.

MEHTAB S.GILL, J.

This is an appeal against the judgment dated 5.9.2000 of the learned Additional Sessions Judge, Bathinda whereby he convicted Raj Kumar alias Raju under Section 302 I.P.C. and senenced him to undergo life imprisonment and to pay a fine of Rs. 1,000/-, in default further to undergo rigorous imprisonment for one month.

The case of the prosecution is unfolded by the statement of Nasib Kaur Ex.PH, given to ASI Jagrup Singh at Civil Hospital, Bathinda on 11.6.1999 at 5.45 p.m. Nasib Kaur stated that she was working as a

peon in the Electricity Board Grid Dabwali Road, Bathinda. Her husband died about 14/15 years back. She had two sons namely Gurpreet Singh aged 19 years and Nirmal Singh aged 17 years, both were residing separately from her. Raj Kumar alias Raju was living with her for the last 8/9 years. Raju after living with her about 8/9 years now wanted to get married with someone. Nasib Kaur objected to it. Due to this, they quarreled daily in the house. On 11.6.1999 at about 11.00 a.m./12.00 noon when she was present in her room along with Raj Kumar alias Raju, he (Raju) again told her that he was going to get married. Nasib Kaur replied that this was not acceptable to her. Raj Kumar took a gallon of kerosene oil lying in the room, poured it on Nasib Kaur and set her on fire with a match-stick. Nasib Kaur shouted for help. Her neighbour Vijay Khan reached there. Raj Kumar while running away, said that now she would have to face consequences. Vijay Khan took Nasib Kaur to Civil Hospital, Bathinda. On the basis of statement Ex.PH, FIR Ex.PH/2 was recorded at Police Station Kotwali, Bathinda at 6.05 p.m. The special report reached the J.M.I.C., Bathinda on 11.6.1999 at 9.30 p.m. Nasib Kaur died on 12.6.1999 due to these burn injuries.

The prosecution to prove its case brought into witness box Dr. Satpal Garg as PW1, Jagdish Kaur Statistical Assistant as PW2, Dr. Maninder Singh as PW3, Vijay Khan as PW4, Lachhmi Devi as PW5, Shri K.K.Lomas J.M.I.C. as PW6, ASI Jagrup Singh as PW7, SI Dinesh Kumar as PW8.

Learned counsel for the appellant has argued that the two witnesses to the occurrence Vijay Khan PW4 and Lachhmi Devi PW5 have

retracted from their statements. They were declared hostile. In their cross-examination, they did not yield and stood by their statement, that appellant Raj Kumar did not set Nasib Kaur on fire, though he was present when they had come. It is not believable that the two witnesses Vijay Khan PW4 and Lachhmi Devi PW5, both being neighbours of the deceased, were mute spectators to the occurrence. If they were present, they would have surely intervened to stop the appellant from pouring kerosene oil and setting Nasib Kaur on fire. There are material infirmities in both the dying declarations; one (Ex.PH) made to ASI Jagrup Singh PW7 and the other (Ex.PG) made to Mr. K.K.Lomas, J.M.I.C. PW6. ASI Jagrup Singh PW7 has stated, that the relatives of the deceased were present, when the dying declaration was recorded. Deceased was tutored by them and it is thereafter Raj Kumar's name was falsely introduced. As per the statement of Dr. Maninder Singh PW3 who prepared the post-mortem report, deceased Nasib Kaur had 90% burns on her. Nasib Kaur with 90% burns could not have given a statement, which would have been audible, either to ASI Jagrup Singh PW7 or Mr. K.K.Lomas, J.M.I.C. PW6. Dr. Satpal Garg PW1 in his testimony before the Court has stated, that he has not signed the dying declaration. The alleged dying declaration given to Mr. K.K.Lomas, J.M.I.C. PW6, is not in detail but a very short statement. The other statement Ex.PH given to ASI Jagrup Singh PW7 is a very lengthy statement thus showing that the deceased was tutored. On the basis of statement Ex.PH, FIR Ex.PH/2 was recorded.

Learned counsel for the State has argued that the dying declaration Ex.PG is first in time. Appellant has been named in the

statement. It has been stated by the deceased that kerosene oil was poured on her by the appellant and thereafter he set her ablaze. The fibre of both the dying declarations Ex.PH and Ex.PG is the same on all the material aspects. It has come in evidence of both Vijay Kumar PW4 and Lachhmi Devi PW5 that deceased and appellant Raj Kumar were residing together. They both are neighbours of the deceased and they saw the deceased getting burnt. From the statements of both these witnesses, a lot can be taken out qua the occurrence. They wanted to hide the fact of the appellant burning the deceased probably because they were the neighbours and since Nasib Kaur had died, they did not want to be on enimical terms with appellant Raj Kumar. Dr. Satpal Garg PW1 has stated, that there was a faint smell of kerosene emanating from the body of the deceased. The Judicial Magistrate Mr. K.K.Lomas PW6, before recording of the statement of Nasib Kaur, had taken the opinion of Dr. Satpal Garg PW1 who declared her to be fit to give a statement.

We have heard the learned counsel for the parties and perused the record with their assistance.

The case of the prosecution hinges on two dying declarations; the first being Ex.PH made to ASI Jagrup Singh PW7, on the basis of which FIR Ex.PH/2 was recorded. The second dying declaration being Ex.PG given to Mr. K.K.Lomas, J.M.I.C. PW6. Mr. K.K. Lomas PW6 in his testimony before the Court has stated, that on 11.6.1999 an application Ex.PF was made to him by ASI Jagrup Singh PW7 for recording of the statement of Nasib Kaur, who was admitted in Civil Hospital, Bathinda. This request was made at 3.20 p.m. Thereafter he went to Civil Hospital

Bathinda. After making the request Ex.PF/1, to the doctor of the fitness of Nasib Kaur 1, Dr. Satpal Garg PW1 gave his opinion Ex.PF/2, declaring her fit to make a statement. Mr. K.K.Lomas, J.M.I.C. PW6 then recorded her statement Ex.PG in his own hand, which was read over and explained to her. Thereafter Nasib Kaur signed it. Dr. Satpal Garg PW1 certified that Nasib Kaur remained fit throughout while making the statement, he remained present when the statement was being recorded. Mr. K.K.Lomas, J.M.I.C. PW6 then finally certified the statement to be a correct and truthful recording and the statement had been recorded voluntarily. Before recording of the statement, he satisfied himself that the declarant was conscious and she remained conscious throughout, this endorsement is Ex.PG/1. Statement Ex.PG was recorded on 11.6.1999 at 3.50 p.m. Similarly, the dying declaration Ex.PH recorded by ASI Jagrup Singh PW7, on the basis of which FIR Ex.PH/2 was recorded, also states in detail that kerosene oil was poured by the appellant and it is thereafter he set her on fire with a match-stick. Both the dying declarations Ex.PH and Ex.PG corroborate each other on all counts. The name of the appellant has been clearly mentioned. Kerosene oil poured on Nasib Kaur is clearly mentioned. Appellant setting the deceased on fire is mentioned. When the statement Ex.PG was being recorded by Mr. K.K.Lomas PW6, Dr. Satpal Garg PW1 was also present. Statement Ex.PG was recorded at 3.50 p.m. while statement Ex.PH was recorded at 5.45 p.m. Both were recorded on the same day i.e. on 11.6.1999.

Vijay Khan PW4 and Lachhmi Devi PW5 though declared hostile, have stated in their testimony before the Court, that they were on

visiting terms with Nasib Kaur. Both have stated that they saw Nasib Kaur burning in fire and many people collected there. They further stated that appellant Raj Kumar was present on the spot at the time when the occurrence had taken place though they did not see appellant Raj Kumar setting Nasib Kaur on fire. Both the witnesses resiled from their statements for the sole reason that Nasib Kaur died on 12.6.1999 and they did not want to now have bad relations with appellant Raj Kumar who was also their neighbour.

Both dying declarations Ex.PH and Ex.PG are natural and truthful. Nasib Kaur at that moment was on the verge of death and she naturally did not want to tell a lie or to concoct a false case to implicate the appellant.

The recording of the FIR Ex.PH/2 promptly is also going a long way in proving the case of the prosecution. Occurrence had taken place on 11.6.1999 at 11.00 a.m/12.00 noon. Statement of Nasib Kaur Ex.PG was recorded at 3.50 p.m. by Mr. K.K.Lomas PW6. The second statement Ex.PH was recorded by ASI Jagrup Singh PW7, which had all the material facts as enumerated in the statement Ex.PG. On the basis of this statement, FIR Ex.PH/2 was recorded on the same day i.e. on 11.6.1999 at 6.05 p.m. and the special report reached the J.M.I.C. on the same day at 9.30 p.m. There is no delay in lodging of the FIR. In fact, it is prompt. This also is a factor, which is going in favour of the prosecution.

With the above discussion and observations, we are of the considered opinion that there is no infirmity in the judgment of the learned trial Court.

Criminal Appeal No. 142-DB of 2001

Appeal is dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

October 17, 2006
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO